

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DAMARIO RASHEED STERLING,  
DAVID SHERWOOD JOHNSON,  
ELIZABETH ECKLUND, and ROBERT  
ERICKSON, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

VS.

CAMI L. FEEK, Commissioner,  
Washington State Employment Security  
Department, in her individual capacity, and  
in her official capacity;

Defendant.

No. 22-5250-cv

COMPLAINT—CLASS ACTION FOR  
INJUNCTIVE RELIEF AND MONEY  
DAMAGES—42 U.S.C. § 1983

## Jury trial demanded

## **I. NATURE OF THE ACTION**

1. Since March 2020, several hundred thousand people lost jobs due to the Covid-19 pandemic and its economic consequences and sought benefits from the Washington Employment Security Department. Many Claimants including the Plaintiffs in this case were paid benefits only to later learn that their benefit entitlement was later “redetermined,” in whole or in part, by state officials. Plaintiffs received determinations retroactively denying their unemployment benefits or assessing overpayment charges that were untimely and legally void. Those redeterminations were used to take money from Plaintiffs they desperately needed in order to survive amid an unprecedented economic disaster. Plaintiffs only learned of the actions of the Employment Security Department through confusing and misleading form correspondence that failed to inform Plaintiffs of the basis for why their money was being taken away, depriving

Plaintiffs of due process of law including any meaningful opportunity to challenge the state's redeterminations and overpayment assessments.

2. Defendant Cami Feek, as the acting Commissioner and later as the Commissioner of the Employment Security Department, caused the violations of Plaintiffs' civil rights alleged in this Complaint by approving or ratifying the unlawful actions, policies and procedures of the Department challenged in this action, including how the Department redetermined claimants' entitlement to unemployment benefits, and communicated with claimants about any appealable decisions of ESD related to unemployment benefit claims. Plaintiffs seek monetary damages for Defendant's actions in her personal capacity, and declaratory and injunctive relief for Defendant's actions in her official capacity, as alleged in this Complaint.

3. Plaintiffs seek an injunction to stop Defendant's unlawful practices described below, and seek nominal, actual, and exemplary monetary damages for the losses they suffered related to Defendant's violation of Plaintiffs' rights under federal law, as well as Plaintiffs' attorney fees and costs of this action.

## II. PARTIES

4. Plaintiff Damario Rasheed Sterling is a resident of King County, Washington.

5. Plaintiff David Sherwood Johnson is a resident of Kitsap County, Washington.

6. Plaintiff Robert Erickson is a resident of Multnomah County, Oregon.

7. Plaintiff Elizabeth Ecklund is a resident of Thurston County, Washington.

8. Defendant Cami L. Feek is a resident of Thurston County, Washington. She was either the acting Commissioner or the duly appointed Commissioner of the Employment Security Department during the times relevant to this Complaint.

9. Each act and threat to act alleged below was done by Defendant under color and pretense of the statutes, ordinances, regulations, customs and usages of the State of Washington.

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### III. VENUE AND JURISDICTION

10. This Court has original jurisdiction over Plaintiffs' claims under federal law pursuant to 28 U.S.C. § 1331, because they present a federal question.

11. This Court has personal jurisdiction over Defendant because she undertook the actions and omissions that are the subject of this action in Washington, including within this District. Defendant has her residence in and continuously and systematically conducts business in Washington, including within this District.

12. This action should be assigned to the Tacoma division of this Court due to Defendant's location in Thurston County, Washington. A substantial amount of the actions and omissions at issue in this Complaint occurred in Thurston County, Washington. LCR 3(e)(1).

#### **IV. BACKGROUND ALLEGATIONS**

## **A. Overview of Legal Responsibilities of the Washington Employment Security Department.**

13. Washington State's unemployment compensation system is part of a cooperative federal-state program established in response to the Great Depression. The State administers the program in accordance with federal standards. The purpose of the program (codified at Title III of the Social Security Act, 42 U.S.C. §§ 501 *et seq.*) is to provide cash assistance to workers as quickly as possible after they lose employment. The State of Washington has implementing legislation known as the Employment Security Act (codified in Title 50 of the Revised Code of Washington) and regulations (in Title 192 of the Washington Administrative Code).

14. The Employment Security Act provides that it “shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.” RCW 50.01.010. The Act pronounces unemployment to be the “greatest hazard of our economic life;” the legislature intended the Act to “remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come.” *Id.*

1       15. Washington State's unemployment compensation program is financed in large  
 2 part by grants provided by the federal government pursuant to the Social Security Act, 42 U.S.C.  
 3 §§ 501-503. Accordingly, the State's program must meet certain minimum standards established  
 4 by federal statutes and regulations. Those standards require the State to create provisions for  
 5 "such methods of administration ... as are found by the Secretary of Labor to be reasonably  
 6 calculated to insure full payment of unemployment compensation when due" and that ensure the  
 7 "[o]ppportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims  
 8 for unemployment compensation are denied." 42 U.S.C. §§ 503(a)(1), (a)(3).

9       16. State statutes and regulations also govern administration of its unemployment  
 10 compensation program, including the designation of the Employment Security Department (ESD  
 11 for short) as the administering agency. RCW 50.08.010. The State of Washington Office of  
 12 Administrative Hearings (OAH) adjudicates administrative appeals of ESD unemployment  
 13 compensation determinations. *See generally* WAC 192-04.

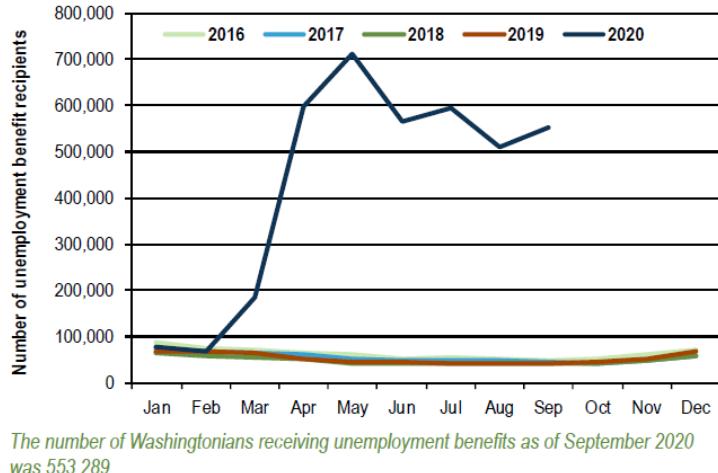
14       a. **Eligibility for Unemployment Compensation Benefits**

15       17. To be eligible for unemployment compensation benefits, claimants seeking  
 16 benefits from Washington State must be unemployed through no fault of their own. RCW  
 17 50.20.010; 50.04.310(1) (definition of unemployed individual). Other basic requirements  
 18 include that the claimant must complete an application for benefits, satisfy any applicable  
 19 waiting week and job search requirements, and must be able and available to perform suitable  
 20 work if it becomes available. RCW 50.04.010(1).

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1       18. As a result of the  
 2 COVID-19 pandemic (and the  
 3 associated massive job loss), the  
 4 number of Washington State workers  
 5 who lost income and were required to  
 6 file an unemployment claim in  
 7 Washington to gain access to safety-  
 8 net benefits increased dramatically. In  
 9 the years 2016 to 2019, the number of  
 10 individuals receiving benefits from  
 11 ESD was well below 100,000 each month; in May 2020, the same figure shot to a high of over  
 12 700,000 individuals. *See* 2020 Labor and Economic Market Report, Washington Employment  
 13 Security Department (published March 2021), 45  
 14 <https://media.esd.wa.gov/esdwa/Default/ESDWAGOV/labor-market-info/Libraries/Economic-reports/Annual-Report/2020-labor-market-and-economic-report.pdf> (graphic featured above).

Figure 4-1. Unemployment benefit recipients by month, all benefits<sup>4</sup>  
 Washington state, January 2016 through September 2020  
 Source: Employment Security Department/LMEA, Unemployment Insurance Data Warehouse



*The number of Washingtonians receiving unemployment benefits as of September 2020 was 553,289.*

16       19. On March 27, 2020, Congress passed the federal Coronavirus Aid, Relief, and  
 17 Economic Security Act (“CARES Act”), in part in response to the dramatic increase in the need  
 18 for unemployment benefits and to account for the fact that some of the requirements of regular  
 19 unemployment benefits would tend to exclude some individuals who were adversely affected by  
 20 the unprecedented job loss caused by the pandemic. 15 U.S.C. §§ 9021-9032.

21       20. The CARES Act created three new sources of federally-funded unemployment  
 22 benefits: Federal Pandemic Unemployment Compensation (“FPUC”), Pandemic Emergency  
 23 Unemployment Compensation (“PEUC”), and Pandemic Unemployment Assistance (“PUA”).  
 24 These programs were extended by the federal Continued Assistance for Unemployed Workers  
 25 Act and the American Rescue Plan Act. Washington’s ESD paid out traditional unemployment  
 26

1 insurance benefits and also these pandemic-related benefits to numerous unemployed individuals  
 2 in the three years preceding the filing of this Complaint.

3       **b. Application Process for Unemployment Compensation Benefits**

4       21. When an individual files an initial claim for unemployment compensation in  
 5 Washington, ESD must issue a Notice of Monetary Determination. This Monetary  
 6 Determination indicates whether claimants are monetarily eligible for unemployment  
 7 compensation based on a comparison between Washington's eligibility requirements and the  
 8 claimant's earnings during a 12-month base period based on when the claimant filed the initial  
 9 claim. RCW 50.20.140(5). If the claimant has insufficient wages in the base period, ESD issues  
 10 a Monetary Determination denying benefits on the ground that the claimant is monetarily  
 11 ineligible. *See* RCW 50.20.180 (if claimant is denied benefits, they "shall be promptly issued  
 12 written notice of the denial and the reasons therefor"); WAC 192-120-020(1)(a) (defining  
 13 monetary determination as the "statement of wages and hours"). If ESD finds that the claimant  
 14 has sufficient wages in the base period (and is therefore monetarily eligible), the agency issues  
 15 a Monetary Determination that includes the claimant's maximum weekly benefit amount and  
 16 maximum potential benefit amount. RCW 50.20.140(5).

17       22. In addition to considering a claimant's monetary eligibility, ESD must make a  
 18 preliminary assessment shortly after a claim is filed as to whether there are issues with a claim  
 19 unrelated to the base period wage requirements (for example, issues related to the individual's  
 20 job separation or ability and availability for work). If no such issues are identified, ESD must  
 21 promptly issue the benefits. If ESD detects a potential issue, it assigns the matter to an  
 22 adjudicator for review. ESD then conducts fact finding by contacting the claimant, the employer,  
 23 and/or any other necessary parties. *See* WAC 192-120-030 (ESD will notify claimant about any  
 24 potential eligibility issue). ESD must promptly conduct and conclude these fact-finding  
 25 investigations. *See* RCW 50.20.160(3) (limiting time for ESD to redetermine an allowance of  
 26 benefits to the claimant once it becomes final); WAC 192-120-030 (claimant is entitled to

1 adequate notice of an eligibility issue before ESD makes a decision); ESD adjudicator manual,  
 2 Section 5400 (ESD manual instructs employees that under federal performance standards, “we  
 3 must mail [*sic*] nonmonetary decision no later than 21 days after we know or should have known  
 4 about the issues”).

5       23. If the fact-finding investigation leads the ESD’s adjudicator to conclude the  
 6 claimant is eligible and qualified to receive benefits, ESD must promptly issue the benefits.  
 7 WAC 192-110-090. If the fact-finding investigation leads the adjudicator to disqualify or hold  
 8 the claimant ineligible for benefits, ESD must promptly issue a determination letter reflecting  
 9 the denial. RCW 50.20.180. The claimant is entitled to an administrative appeal of that  
 10 determination under both federal and Washington law. 42 U.S.C. § 503(a)(3); RCW 50.32.020.

11       24. While PUA benefits were available, ESD required claimants to file a separate  
 12 application for PUA benefits (after the agency denied their initial application for regular  
 13 benefits). PUA benefit determinations were subject to the same procedural protections (including  
 14 notice and a hearing) as regular unemployment compensation benefits. *See* 15 U.S.C. § 9021(h)  
 15 (requiring states to follow existing Disaster Unemployment Assistance regulations at 24 C.F.R.  
 16 Part 625 to the administration of PUA unless otherwise stated); 20 C.F.R. 625.11 (requiring  
 17 states to apply state law to the claims for and payment of DUA); 20 C.F.R. 625.14(g) (requiring  
 18 states to apply notice provisions of 20 C.F.R. 625.09 and appeal provisions of 20 C.F.R. 625.10  
 19 to DUA overpayment procedures); John Pallasch, UIPL No. 16-20, at 1-9, 1-11 to 1-12, U.S.  
 20 DEP’T OF LAB. (Apr. 5, 2020), [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_16-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf).  
 21 An award of PUA benefits would also result in an entitlement to FPUC supplemental benefits,  
 22 which were also subject to the same procedural protections (including notice and a hearing) as  
 23 regular unemployment compensation benefits. 15 U.S.C. § 9023(f)(4); John Pallasch, UIPL No.  
 24 15-20, at 1-6, U.S. DEP’T OF LAB. (Apr. 4, 2020)  
 25 [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_15-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf).

1       25.    Claimants were eligible to apply for PEUC benefits if they had exhausted their  
 2 regular unemployment compensation entitlements or if their benefit year had expired. 15 U.S.C.  
 3 § 9025(a)(2). PEUC benefits were subject to the same procedural protections (including notice  
 4 and a hearing) as regular unemployment compensation benefits. *See* 15 U.S.C. § 9025(e)(3)-(4)  
 5 (requiring states to apply state law when issuing determinations and offsetting PEUC  
 6 overpayments). *See also* John Pallasch, UIPL No. 17-20, at I-7 to 1-8, U.S. DEP'T OF LAB.  
 7 (Apr. 10, 2020) [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_17-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_17-20.pdf).

8       26.    For all of the above programs, a claimant must certify each successive week of  
 9 unemployment by filing a weekly continued claim form with ESD. The continued claim form  
 10 leads to a determination of the individual's weekly eligibility for unemployment benefits by  
 11 collecting information about the claimant's ability to work, availability for work, compliance  
 12 with work search requirements (when not waived), wages earned or work completed, and other  
 13 factors contributing to the eligibility determination for that week. RCW 50.20.140(4); WAC 192-  
 14 140-005.

15       27.    The initiation of benefit payments creates a presumption of continuing eligibility  
 16 as to future payments during the applicable time period. “[B]ased on [the] initial determination  
 17 and in the absence of facts clearly establishing current ineligibility, the state agency presumes  
 18 the claimant's continued eligibility until it makes a determination otherwise.” Grace Kilbane,  
 19 UIPL No. 04-01, at ¶ 7, U.S. DEP'T OF LAB. (Oct. 27, 2000)  
 20 <https://wdr.doleta.gov/directives/attach/UIPL4-01.cfm>. The state agency can pause benefits for  
 21 a brief 14-day period to investigate facts that could indicate ineligibility, but it must then turn  
 22 benefits back on or produce a written notice. *Id.*, ¶ 6. In the event that ESD makes a decision that  
 23 a claimant is no longer eligible for benefits or denies benefits for any particular week, the  
 24 claimant is entitled to the same procedural protections that apply to initial determinations,  
 25 including notice and an administrative appeal. 42 U.S.C. § 503(a)(3); RCW 50.20.190(3).

1       28. ESD is not permitted to redetermine prior, final allowances of benefits to  
 2 claimants except under certain narrow circumstances. RCW 50.20.160(3). Although ESD's  
 3 Commissioner may redetermine such allowance within two years after the benefit year in which  
 4 a payment occurs to recover improper payments, "in the absence of fraud, misrepresentation, or  
 5 nondisclosure, this provision or the provisions of RCW 50.20.190 shall not be construed so as to  
 6 permit redetermination or recovery of an allowance of benefits which having been made after  
 7 consideration of the provisions of RCW 50.20.010(1)(c), or the provisions of RCW 50.20.050,  
 8 50.20.060, 50.20.080, or 50.20.090 has become final." *Id.*

9       29. ESD makes informal decisions as to a claimant's eligibility for benefits on a  
 10 weekly basis each time the claimant certifies responses to their weekly claim eligibility  
 11 questions, and seeks a week of benefit payments based on the same. Where ESD informally  
 12 allows benefits by paying a weekly claim, thirty days goes by, and there is no showing of fraud,  
 13 misrepresentation or nondisclosure, RCW 50.20.160(3) prohibits ESD from issuing a  
 14 redetermination to deny benefits addressing issues already informally allowed in the claimant's  
 15 favor. *In re Barrett*, Empl. Sec. Comm'r Dec.2d 878 (1999); *In re Gilpin*, Empl. Sec. Comm'r  
 16 Dec.2d 872 (1999). Although the payment of a week's benefits does not in itself constitute a  
 17 decision in the claimant's favor concerning job separation issues, ESD informally adjudicates  
 18 the claimant's job separation as qualifying for benefits when ESD pays benefits and a reasonable  
 19 time to conduct an investigation of any job separation issue expires. *In re Winters*, Empl. Sec.  
 20 Comm'r Dec.2d 1029 (2019) (holding job separation issues as noted in RCW 50.20.160(3) are  
 21 "considered and determined by the Department after it has had a reasonable opportunity to  
 22 conduct an investigation into that specific issue"). If ESD redetermines an allowance of benefits  
 23 more than 30 days after any informal allowance becomes final, without a showing of fraud,  
 24 misrepresentation or non-disclosure, ESD's redetermination decision is *void ab initio* (null and  
 25 void) because it violates RCW 50.20.160(3). *In re Weingard*, Empl. Sec. Comm'r Dec.2d 920  
 26 (2008).

### c. Reduction of Benefits Through Offset as a Result of Overpayments

30. An overpayment occurs when ESD pays benefits that the claimant is not entitled to receive. RCW 50.20.190(1). When investigating an issue that may result in an overpayment, ESD must “continue to make timely [unemployment compensation] payments (if due) and wait to commence recovery of overpayments until an official determination of ineligibility is made.”

Portia Wu, UIPL No. 1-16, at ¶ 4(a), U.S. DEP'T OF LAB. (Oct. 1, 2015)

[https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_01-16\\_Acc.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_01-16_Acc.pdf)

31. If ESD identifies an overpayment issue, it must notify the claimant of the potential overpayment, give the claimant an opportunity to be heard, and send the claimant a determination of overpayment and notice of appeal rights before reducing benefits. *Id.* The same procedural protections that apply to denials of benefits discussed above—including notice and the right to administrative appeal—apply to determinations of overpayments. 42 U.S.C. § 503(g)(1); RCW 50.20.190(3). A determination establishing an overpayment cannot occur until the claimant has an opportunity to be heard, which implies the claimant must first be provided notice of any potential issue(s) and a reasonable amount of time to respond. Portia Wu, UIPL No. 1-16, Change

<sup>1</sup>, Attachment (Questions and Answers), at ¶(1)(3), U.S. DEP'T OF LAB. (Jan. 13, 2017) (citing

*California Human Resources Dept. v. Java*, 402 U.S. 121 (1971))

[https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_01-16-Change-1.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_01-16-Change-1.pdf). A formal determination including an overpayment assessment must provide “sufficient information to enable [the individual] to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.” Portia Wu, UIPL No. 1-16, at ¶ 4(c) (quoting Standard for Claim Determination § 6013.C.2 and citing notice requirements in ET Handbook 301 including “1) a summary statement of the material facts on which the determination is based; 2) the reason for allowing or denying benefits; and 3) the conclusion of the decision based on the state’s law”). State unemployment agencies may not attempt to recover on overpayments

1 until “an official determination of the overpayment has been made, consistent with Federal law  
 2 requirements.” *Id.*, at ¶ 4(d).

3       32. Under some circumstances, ESD may recoup overpayments by offsetting future  
 4 benefits. To pursue an offset, ESD must first determine whether the overpayment qualifies for  
 5 offset. An overpayment may only be satisfied through an offset from continuing claim payments  
 6 if the claimant owes an overpayment and does not make monthly minimum payments. WAC  
 7 192-230-100. In addition, ESD may make a discretionary decision to waive recoupment of most  
 8 overpayments. RCW 50.24.020; WAC 192-230-110. ESD must “clearly communicate the  
 9 potential availability of a waiver to individuals when establishing an overpayment and, if an  
 10 individual requests a waiver, make an official determination on the waiver request before  
 11 initiating overpayment recovery.” Portia Wu, UIPL No. 1-16, at ¶ 4(a) U.S. DEP’T OF LAB.,  
 12 (Oct. 1, 2015) [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_01-16\\_Acc.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_01-16_Acc.pdf); ESD  
 13 adjudicator manual Section 5600 (Appeals and Petitions) (“We do not collect any overpayment  
 14 while a timely appeal is pending.”).

15       33. Washington’s Employment Security Department frequently pays claimants  
 16 benefits the claimant should not have received, which are known as overpayments. Overpayment  
 17 can be caused by agency error, claimant or employer error, or other reasons, including in rare  
 18 cases fraud. Overpayments can lead to ESD issuing an assessment to the recipient of the funds  
 19 or using various methods to attempt to collect the money back from the unemployment claimant  
 20 who received it. In the fiscal year ending September 30, 2021, the United States Department of  
 21 Labor reports that over ten percent of the unemployment benefits paid by Washington’s ESD  
 22 (\$112,822,420 of the total paid amount of \$1,126,577,243) represented overpayments.<sup>1</sup> In the  
 23 three most recent years ending June 30, 2021, the Department of Labor estimates ESD  
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 26 <sup>1</sup> <https://www.dol.gov/sites/dolgov/files/ETA/UIOverpayment/XLS/2021%20-%20Fiscal%20Year%20Data%20Ending%20September%2030.xlsx> (accessed March 24, 2022) (report showing  
 fiscal year 2021 overpayment data extrapolations based on Benefits Accuracy Management reporting by  
 unemployment agencies across the United States).

1 improperly overpaid \$308,721,487 in benefits, yielding an average improper payment rate of  
 2 approximately 9.68% of benefits paid.<sup>2</sup>

## 3 V. FACTUAL ALLEGATIONS

### 4 a. Defendant.

5 34. Defendant Cami Feek became the acting Commissioner of the Employment  
 6 Security Department on February 1, 2021. She was formally appointed and became the  
 7 Commissioner on June 9, 2021. Formerly, she had served as ESD's Paid Family and Medical  
 8 Leave Director prior to when she became the Deputy Commissioner, and as ESD's Chief  
 9 Operating Officer starting in August 2018.

10 35. Since February 2021, Defendant Feek oversaw the administration of the State of  
 11 Washington's unemployment benefits programs. By state law, her position gave her "the power  
 12 and authority to adopt, amend, or rescind such rules and regulations, to employ such persons,  
 13 make such expenditures, require such reports, make such investigations, and take such other  
 14 action as he or she deems necessary or suitable to [administer Title 50 of the Revised Code of  
 15 Washington]." RCW 50.12.010(1); RCW 50.08.010 (establishing Department with  
 16 Commissioner at its head). Defendant also has the right to appoint deputies to conduct business  
 17 on behalf of the Department, and "may delegate to any person appointed such power and  
 18 authority as the commissioner deems reasonable and proper for the effective administration of  
 19 this title." RCW 50.12.020.

20 36. Since 2018, ESD has used proprietary enterprise software known as the  
 21 Unemployment Tax and Benefits system (UTAB) to administer the state's unemployment  
 22 benefits program. UTAB stores data on claims, claimants, employers, special wage information  
 23 and document scans for the purpose of managing and paying all aspects of unemployment

26 \_\_\_\_\_  
 27 <sup>2</sup> <https://www.dol.gov/agencies/eta/unemployment-insurance-payment-accuracy/2021/WA> (accessed March 24,  
 28 2022).

1 benefits claims. According to ESD's own policies, customs, and usages, staff must use form  
 2 correspondence generated through UTAB to communicate with claims recipients.

3 37. Forms generated by UTAB are frequently poorly written and confusing to the  
 4 point of depriving a recipient of information sufficient to understand the factual or legal basis  
 5 for the ESD's decision. Letters like the Re-Evaluate Claim letter Plaintiff Sterling received (see  
 6 ¶¶ 47-56, below), and the Potential New Claim letter that Plaintiffs Johnson and Erickson  
 7 received (see ¶¶ 57-64 and ¶¶ 74-48, below, respectively), were generated through UTAB.

8 **i. Defendant Caused the Issuance of Denial Notices and Overpayment  
 9 Assessments Lacking Explanations of the Facts and Law Underpinning ESD's  
 Determinations**

10 38. Defendant is aware that UTAB's form letters frequently fail to communicate the  
 11 basis for ESD decisions and the relevant law and facts considered by the agency in issuing  
 12 overpayment notices. Starting as long ago as November 2019, ESD employees discussed an  
 13 ongoing problem that the Re-Evaluate Claim letter in UTAB is considered legally "deficient" by  
 14 the Office of Administrative Hearings that hears appeals from ESD decisions. When a claimant  
 15 appeals a decision reflected in ESD's Re-Evaluate Claim letter, the assigned administrative law  
 16 judge at OAH rules the letter is legally void under a standing OAH policy. OAH's orders  
 17 routinely direct ESD to vacate any denial of benefits or overpayment amount stated in the Re-  
 18 Evaluate Claim letter on this basis. But Defendant is aware ESD's UTAB software continues to  
 19 issue letters that are legally "deficient," and UTAB prevents agency staff from implementing  
 20 decisions voiding those letters.

21 39. Internal e-mail messages from ESD reveal that ESD employees have been  
 22 directed to issue additional letters to "paper over" the agency decisions that are originally  
 23 communicated in legally "deficient" UTAB letters. In November 2019, one ESD employee wrote  
 24 colleagues that "UTAB will not remove the overpayments from the re-eval cases." She noted  
 25 another benefits decision causing trouble in UTAB in September 2020, which "like most of them,  
 26 asks for a 'letter of allowance'" in addition to holding the ESD decision was "deficient". This

1 was reportedly “a problem a couple of times since we were re-writing the out-of-UTAB letters  
2 with more details, but still as denials.” A response to this message from another ESD employee  
3 indicated that “Policy, legal and UICS are in conversations on how to move forward and finding  
4 resolutions with the re-evaluate process.” On information and belief, Defendant knew of and  
5 ratified or caused the continuation of ESD’s practice of sending legally deficient determination  
6 letters and overpayment notices to claimants.

7       40.    Messages from another ESD employee in September 2020 reflect the agency’s  
8 knowledge that many determination letters issued through UTAB (including, but not limited to,  
9 the Re-Evaluate Claim form letter) are legally “deficient.” This employee forecasted that due to  
10 the flawed correspondence issued by UTAB, “Basically, we will get these cases back from OAH  
11 and have to do the work over again or grant the claimant remedies that the UTAB is unable to  
12 do.” A message from the Office of Administrative Hearings to ESD staff and managers from  
13 around the same time notes that all cases related to the letter “Extended Benefits-Not an  
14 Exhaustee” are being dismissed because the letter is deficient.

15       41.    Defendant did not respond to the concern that ESD was issuing legally infirm  
16 benefits denial notices to claimants, some of which included overpayment notices, by stopping  
17 these troubling practices. Instead, Defendant, on information and belief, knew of and ratified a  
18 work-around in which the deficient notices continue to be issued and used to assess  
19 overpayments, notwithstanding that ESD’s determination letters fail to state the facts and law  
20 supporting a denial or overpayment assessment. On the back end, ESD staff regularly compile  
21 spreadsheets of data listing all claimants who have appealed from ESD decisions and prevailed  
22 by convincing OAH that the ESD’s determination notice is “deficient.” These individuals are  
23 batched and sent to ESD’s “Policy” team to have different determination letters issued after the  
24 conclusion of the claimant’s successful appeal, to reinstitute the same outcome reflected in the  
25 deficient decisions set aside on appeal. Frequently, the vacated decisions concern the Re-  
26

1 Evaluate Claim letter, Potential New Claim letter, and other commonly used form  
 2 correspondence such as the letters Plaintiffs received as alleged in this Complaint.

3       42. To this day, Defendant's conduct causes ESD to send confusing and legally  
 4 deficient benefits denial and overpayment assessment notices to numerous unemployment  
 5 claimants. Defendant has caused ESD to recoup funds from numerous claimants through  
 6 overpayment notices attached to confusing and factually and legally unfounded redetermination  
 7 letters. Since March 2020, hundreds (or more) of such determination notices appealed by  
 8 claimants statewide have been summarily overturned and sent back to the Employment Security  
 9 Department by the Washington Office of Administrative Hearings for further action consistent  
 10 with claimants' due process rights and rights under Title 50 RCW. Members of the public have  
 11 complained repeatedly to the Department and in public forums about the unfairness and  
 12 indeterminacy of Defendant's arbitrary redeterminations, including those using the Re-Evaluate  
 13 Claim form. As a result, Defendant is aware that ESD's redeterminations often lack any basis to  
 14 sustain liability for an overpayment, nor do they establish any reason why the receiving claimant  
 15 is not entitled to keep his or her benefits.

16  
 17           **ii. Defendant Causes ESD to Wrongfully Redetermine Claimants' Entitlement  
 to Their Benefits and Issue Untimely Overpayment Notices**

18       43. ESD staff also regularly use UTAB to issue redetermination notices that assess  
 19 claimants for benefit overpayments. These notices frequently 1) redetermine the claimant's  
 20 entitlement to benefits paid (i.e. announce that the claimant is not entitled to benefits); 2) are  
 21 issued over thirty days after ESD made a final allowance of the benefits in question to the  
 22 claimant; 3) lack any factual or legal argument that the claimant has engaged in fraud,  
 23 misrepresentation, or non-disclosure, and 4) follow ESD's consideration of the claimant's  
 24 certification that the claimant is able and available to work, or the claimant's job separation  
 25 circumstances, or an alleged refusal to work. RCW 50.20.160(3).

1       44. Redetermination letters from ESD, many of which include overpayment  
 2 assessments, are routinely set aside as “void ab initio” by the Washington Office of  
 3 Administrative Hearings because they are untimely and/or procedurally deficient in violation of  
 4 the requirements of RCW 50.20.160(3) summarized above. When a decision is vacated on these  
 5 grounds in an administrative appeal, OAH provides a copy of its decision directly to ESD.  
 6 Defendant is aware that numerous ESD determination letters and overpayment notices continue  
 7 to be issued despite violating RCW 50.20.160(3). ESD lacks legal authority to issue such letters  
 8 and the letters have no legal force or effect. Yet Defendant causes ESD to continue to issue such  
 9 deficient redetermination and/or overpayment assessment letters, many of which are not  
 10 received, understood, or timely appealed by the receiving claimant.

11       45. Defendant continues to cause ESD to propound the untimely and deficient  
 12 redetermination and overpayment assessment letters because they occasionally survive the  
 13 appeal process and can be used to collect overpayments. Claimants may either fail to appeal on  
 14 time, lack the energy and dedication to appeal every wrongful decision by ESD and pursue it to  
 15 a successful appeal hearing, or are unable to invalidate the determination letter due to a various  
 16 causes including for example a lack of legal representation. In such circumstances, Defendant  
 17 causes ESD to issue untimely and deficient redetermination letters and overpayment assessments  
 18 to take benefits from needy unemployment benefits recipients, despite lacking the legal authority  
 19 to do so.

20       **b. Plaintiffs**

21       46. Plaintiffs are claimants for unemployment benefits who reside or have resided in  
 22 this District, and/or whose unemployment claims were affected by Defendant’s complained of  
 23 actions and omissions occurring in this District. Defendant has caused Plaintiffs to be injured  
 24 by: 1) denying their benefits without sufficient notice or process, 2) seizing their benefits through  
 25 offset without sufficient notice or process, 3) unreasonably delaying benefit (re)determinations  
 26 and payments, and/or 4) depriving Plaintiffs of sufficient information to explain why the

1 Employment Security Department has denied or assessed an overpayment related to Plaintiffs' 2 claims for benefits. Plaintiffs' troubling ordeals are set forth below.

3 **i. Damario Rasheed Sterling**

4 47. Damario Rasheed Sterling is a professional contractor and refinisher who lost his 5 job around March 2020 due to the Covid-19 pandemic. Mr. Sterling applied for benefits from 6 ESD and was approved as monetarily eligible; he began to receive payments in March 2020.

7 48. Mr. Sterling's original monetary determination from ESD stated that he "may 8 receive up to \$551 each week you are eligible for unemployment benefits." The letter stated that 9 "[w]e may need to adjust the amount based on a number of factors." The letter told Mr. Sterling 10 that "[a]nytime there is an adjustment to your determination, we will send you a *Redetermination* 11 of *Unemployment Claim*. We must issue a redetermination before you can file an appeal." The 12 letter encouraged him to "[b]e sure to file your weekly claims, even if you are waiting for an 13 answer from us." (emphasis in original).

14 49. In January 2021, ESD sent Mr. Sterling a determination letter titled "Re-evaluate 15 Claim". It said that "[w]e previously DENIED your benefits based on the information we had at 16 that time. We got new information. This decision replaces the earlier one." The letter continued:

17 We re-evaluated your unemployment benefits starting Mar 15 2020. This update 18 was due to a change in at least one of the items below:

- 19 • Determination of a new issue.
- 20 • Redetermination of an existing issue.
- 21 • Determination or redetermination of a monetary decision.
- 22 • An update to your weekly claim deductions.
- 23 • Processing of an appeal decision.

24 It said, "**You might owe us \$7332.00 as a result of this decision.** We paid you too much. This 25 is called an overpayment. You might need to pay it back." The letter informed Mr. Sterling that 26 if he did not complete and return a "waiver request form," he would have to repay the entire overpayment amount in addition to any supplemental weekly benefits funded by the federal government.

1       50. The January 29 determination letter included an attached table of purported  
 2 overpayment amounts totaling \$7,332.00 over 14 weeks; these weekly benefit payments dated  
 3 from September 20 to December 26, 2020. All of the weekly benefit payments occurred over  
 4 thirty days prior to the January 29 redetermination letter and overpayment notice. The table  
 5 indicated that Mr. Sterling was denied benefits for “multiple reasons” during most weeks  
 6 identified in the notice, though none of the reasons were stated. There is no allegation in the  
 7 letter that the claimant engaged in fraud, misrepresentation, or nondisclosure. No reason for the  
 8 overpayment determination appears anywhere in this letter.

9       51. The letter said that Mr. Sterling could appeal if he disagreed. Mr. Sterling  
 10 requested that ESD waive the overpayment, and ESD denied his waiver request in a February  
 11 11, 2021 letter that informed him for the first time that “[w]e denied your unemployment benefits  
 12 starting Mar [sic] 15 2020 until the reason for our decision no longer exists.” Mr. Sterling then  
 13 filed a timely appeal challenging ESD’s January 29 determination letter and overpayment notice  
 14 and the decision denying him a waiver of the overpayment.

15       52. While Mr. Sterling awaited a decision on his appeal, ESD took thousands of  
 16 dollars through “offsets” from his continuing claim payments. This included \$6,994 to  
 17 compensate ESD for the overpayment amount listed in its January 29, 2021 notice, even though  
 18 the legally void decision had been timely appealed. ESD did not provide Mr. Sterling with any  
 19 prior notice that the offsets were occurring, or give him any appealable decision allowing him to  
 20 challenge the offsets.

21       53. An administrative law judge later ruled that ESD’s January 29, 2021 overpayment  
 22 notice denied Mr. Sterling due process of law under the United States Constitution in that “[t]he  
 23 Department’s Determination Letter failed to inform the parties about the facts that led up to the  
 24 Department’s determination. Indeed, the Determination Letter fails to notify the parties about  
 25 the statute or regulation on which it based its decision.” The decision ordered that Mr. Sterling  
 26 was not disqualified from receiving any benefits and did not owe any overpayment as a result of

1 the January 29, 2021 letter. A copy of the decision was provided to ESD on or around August  
 2 12, 2021.

3       54. Despite ESD losing the appeal, ESD has refused to return to Mr. Sterling the  
 4 funds it deducted from Mr. Sterling's weekly benefits as an offset to pay for the January 29, 2021  
 5 overpayment amount. Mr. Sterling has communicated repeatedly with ESD seeking the return  
 6 of his funds, and ESD refuses to return his benefits or identify any reason why ESD has the right  
 7 to keep his money.

8       55. Mr. Sterling was damaged by ESD's unlawful January 29, 2021 redetermination  
 9 and overpayment assessment. He was forced to spend time responding to the Department's  
 10 baseless notice and arbitrary decision to deprive him of thousands of dollars, including by having  
 11 to appeal the notice in writing; communicate with ESD in an effort to forestall the unlawful  
 12 seizure of his benefits while he remained unemployed and dependent on meager ESD-  
 13 administered benefits for income; and spend time and his cellular telephone's battery, minutes,  
 14 and data on internet access to dispute the baseless determination notice. Despite multiple e-mail  
 15 contacts and telephone calls to ESD, Mr. Sterling received no actual acknowledgement of his  
 16 pleas to correct the baseless determination notice prior to his hearing. Moreover, Defendant  
 17 subjected Mr. Sterling to these actual deprivations of his property rights at a time when she knew  
 18 or should have known that he was forced to subsist on at little at \$275 a week in net income.

19       56. For over six months, Mr. Sterling suffered emotionally from stress, anxiety, and  
 20 humiliation because he could identify no basis for the government's decision to deprive him of  
 21 benefits. He was in a desperate financial situation at the time and lost sleep and worried  
 22 constantly about what the government was accusing him of and how he was going to make ends  
 23 meet.

24       **ii. David Sherwood Johnson**

25       57. David Sherwood Johnson worked as a licensed pharmacist; he became  
 26 unemployed in or around February 2020. Mr. Johnson applied for unemployment benefits from

1 ESD and was found to be eligible for Pandemic Unemployment Assistance in an initial monetary  
 2 determination letter dated April 29, 2020. ESD later sent Mr. Johnson one or more monetary  
 3 determinations reflecting that he could claim Pandemic Emergency Unemployment  
 4 Compensation benefits. Mr. Johnson claimed and was paid weekly benefits in 2020 and  
 5 thereafter.

6       58.    ESD sent Mr. Johnson a letter titled Potential New Claim on June 14, 2021. It  
 7 said that ESD was denying his unemployment benefits from November 8, 2020 to November 20,  
 8 2021. The letter only explained that he was no longer eligible for PUA or PEUC benefits  
 9 “because you are eligible for a new unemployment claim.” The letter suggested that Mr. Johnson  
 10 might be liable to repay benefits he received. Mr. Johnson appealed the Potential New Claim  
 11 letter.

12       59.    The Office of Administrative Hearings ultimately held on September 16, 2021  
 13 that the Potential New Claim letter he had received was “deficient,” in that it failed to provide  
 14 the claimant due process of law because it “fails to give the undersigned or the parties adequate  
 15 notice of the basis for the Department’s decision to deny, reduce, or re-evaluate benefits.” Any  
 16 denial of benefits reflected in the Potential New Claim letter was vacated by OAH. On  
 17 information and belief, this OAH decision was in substance a form order issued in numerous  
 18 other appeal cases concerning ESD’s Potential New Claim letter.

19       60.    Later, ESD admitted in a September 29, 2021 e-mail message to Mr. Johnson that  
 20 as ESD reviewed a potential new claim issue on his unemployment claim, “our computer system  
 21 may have created an overpayment by mistake.”

22       61.    ESD sent Mr. Johnson a letter titled Re Evaluate Claim dated November 17, 2021.  
 23 The determination letter informed him that “We re-evaluated your unemployment benefits  
 24 starting Mar 29 2020. This update was due to a change in at least one of the items below:

25       • “Determination of a new issue.  
 26       • Redetermination of an existing issue.  
       • Determination or redetermination of a monetary decision.  
       • An update to your weekly claim deductions.

1           • Processing of an appeal decision.”

2       The determination letter said that Mr. Johnson “might owe us \$284.00 as a result of this decision.  
 3       We paid you too much. This is called an overpayment.”

4       62. Attached to the November 17 redetermination letter was a table titled  
 5       Overpayment Details. The table claimed that ESD had overpaid Mr. Johnson \$1,395 in benefits  
 6       between April 4-10, 2021, and from May 16-29, 2021. It said none of the alleged overpayment  
 7       related to allegations of fraud. ESD’s letter alleged that Mr. Johnson was denied for “multiple  
 8       reasons” during these weeks, though none of the reasons was identified. Mr. Johnson timely  
 9       appealed this determination letter.

10       63. Mr. Johnson was damaged by ESD’s unlawful June 14, 2021 and November 17,  
 11       2021 redeterminations and related overpayment assessments. He was forced to spend time  
 12       responding to the Department’s baseless notice and arbitrary decision to deprive him of  
 13       unemployment benefits, including by having to appeal in writing; communicate with ESD in an  
 14       effort to forestall the baseless seizure of his benefits while he remained unemployed and  
 15       dependent on meager ESD-administered benefits for income; and spend time and his cellular  
 16       telephone’s battery, minutes, and data on internet access to dispute the baseless determination  
 17       notice.

18       64. For months, Mr. Johnson suffered emotionally from stress, anxiety, and  
 19       humiliation because he could identify no basis for the government’s above decisions to deprive  
 20       him of benefits. He was in a desperate financial situation at the time and lost sleep and worried  
 21       constantly about what the government was accusing him of and how he was going to make ends  
 22       meet.

23           **iii. Elizabeth Ecklund**

24       65. Elizabeth Ecklund is a registered nurse; she became unemployed in March 2020  
 25       and applied for unemployment benefits. Ms. Ecklund was found to be monetarily eligible for  
 26       benefits and received a monetary determination letter from ESD dated March 30, 2020 which

1 was substantially similar to that ESD sent to Plaintiff Sterling. She later received a monetary  
 2 determination reflecting her eligibility for PUA benefits dated July 18, 2020.

3       66. Ms. Ecklund filed various weekly claims for unemployment benefits starting in  
 4 2020. She was paid unemployment insurance (UI) benefits in several weeks. Ms. Ecklund was  
 5 not paid benefits for certain weeks in which she filed a claim, however; for example, in  
 6 September 2020 and thereafter, she filed weekly claims that were not paid despite no explanation  
 7 or appealable denial decision from ESD.

8       67. Again, in January 2021 and continuing until April 2021, several of Ms. Ecklund's  
 9 weekly claims were not paid. Ms. Ecklund did not receive an explanation or appealable decision  
 10 denying her unemployment benefits at the time. Ms. Ecklund received in April 2021 a back-pay  
 11 award from ESD including certain, but not all, of the weeks of unemployment benefits she  
 12 claimed starting in January 2021.

13       68. Ms. Ecklund received a letter from ESD titled "Separation from a Job" dated  
 14 April 29, 2021. The letter explained for the first time that ESD had denied her benefits starting  
 15 September 6, 2020 on the basis that her job separation around that date disqualified her from  
 16 benefits. Ms. Ecklund timely appealed the decision. The decision was later reversed.

17       69. Later, on February 18, 2022, ESD sent Ms. Ecklund a letter titled "Incomplete  
 18 employer information." The letter told her that ESD denied her benefits "from Mar [sic] 15 2020  
 19 to Mar [sic] 13 2021." The letter alleged that ESD asked Ms. Ecklund to provide information  
 20 about a past employer and that she did not respond. It informed her she did not qualify for  
 21 unemployment benefits until she gave ESD the information.

22       70. The February 18 letter also informed Ms. Ecklund ESD was assessing an  
 23 overpayment against her. It stated that she owed \$6,320.00 as a result of ESD's decision and that  
 24 she was "at fault" for the overpayment without further explanation. The letter did not claim that  
 25 Ms. Ecklund had engaged in fraud, misrepresentation, or non-disclosure.

1       71.    ESD's February 18 letter included an overpayment details table. The table  
 2 reflected that ESD believed Ms. Ecklund had received benefits she was not entitled to by law  
 3 during the weeks of May 3-June 27, 2020. Ms. Ecklund appealed the decision.

4       72.    ESD sent another determination letter to Ms. Ecklund dated March 15, 2022. This  
 5 letter informed her that ESD denied her benefits starting January 17, 2021 on the basis she  
 6 separated from an employer around that time who "said [she] quit." The letter did not allege that  
 7 Ms. Ecklund had engaged in fraud, misrepresentation, or non-disclosure.

8       73.    Ms. Ecklund has suffered physical symptoms related to stress and anxiety as a  
 9 result of Defendant's actions and the resulting communications Ms. Ecklund received from ESD  
 10 and has sought medical attention for the same. She worries that she will be subjected in the future  
 11 to additional untimely decisions reversing ESD determinations awarding her benefits, despite  
 12 the putative legal protections against such redeterminations. She has been inconvenienced and  
 13 suffered humiliation due to having to repeatedly litigate appeals of wrongful ESD decisions  
 14 attributable to the acts and omissions of Defendant recited in this Complaint.

15       **iv.    Robert Erickson**

16       74.    Robert Erickson worked as a graphic designer in Washington from 2017 to 2020.  
 17 He became unemployed in approximately June 2020. Mr. Erickson applied unemployment  
 18 benefits and was found to be eligible by ESD. He was paid benefits starting in 2020.

19       75.    ESD sent Mr. Erickson a Potential New Claim letter dated September 2, 2021  
 20 which was substantially similar to that ESD sent to Plaintiff Johnson, as described above. In this  
 21 letter, ESD told Mr. Erickson that he was being retroactively denied unemployment benefits  
 22 starting March 14, 2021 on the basis that he had not filed a new application for unemployment  
 23 benefits. ESD accordingly assumed that Mr. Erickson was no longer eligible for PEUC benefits.  
 24 It claimed Mr. Erickson owed \$976 as a result of the decision and that the obligation could not  
 25 be waived because he was "at fault." There was no allegation of fraud, misrepresentation, or  
 26 non-disclosure included. Mr. Erickson filed a timely appeal.

1       76. An enclosure with the letter summarized the overpayment details the state alleged  
 2 Mr. Erickson owed. Weekly benefit payments from March 14 to April 17 2020 were listed in the  
 3 total amount of \$976.

4       77. Mr. Erickson was damaged by ESD's unlawful September 2, 2021  
 5 redetermination and related overpayment assessment. He was forced to spend time responding  
 6 to the Department's baseless notice and arbitrary decision to deprive him of unemployment  
 7 benefits, including by having to appeal in writing; communicate with ESD in an effort to forestall  
 8 the baseless seizure of his benefits; and spend time and his cellular telephone's battery, minutes,  
 9 and data on internet access to dispute the baseless determination notice.

10       78. For months, Mr. Erickson suffered emotionally from stress, anxiety, and  
 11 humiliation because he could identify no basis for the government's above decision to deprive  
 12 him of benefits. He was in a difficult financial situation and lost sleep and worried constantly  
 13 about what the government was accusing him of and how he was going to make ends meet.

14       **v. Continuing threat of deprivation of Plaintiffs' legally protected interests**

15       79. As a result of Defendant's actions and omissions, unemployment claimants  
 16 including Plaintiffs Sterling, Johnson, Ecklund, and Erickson and others similarly situated face  
 17 an imminent threat of deprivation of their federal rights and their constitutionally protected  
 18 property interests and lack an adequate remedy at law. Unless this Court enjoins Defendant from  
 19 the ongoing unlawful practices described in this Complaint, ESD will likely continue to dun  
 20 Plaintiffs with demands to repay overpayments of benefits lacking factual and legal explanations  
 21 for the decision, and will likely seek to collect on those assessments. Defendant will continue to  
 22 cause Plaintiffs to receive untimely redeterminations of their entitlement to benefits long after  
 23 ESD's determinations awarding Plaintiffs weeks of unemployment benefits have become final.

24       80. Defendant knew or should have known that she was causing unlawful  
 25 unemployment determinations to be issued to members of the public including Plaintiffs  
 26 Sterling, Johnson, Ecklund, and Erickson through the extensively used form letter "Re Evaluate

1 Claim" and "Potential New Claim" determinations, and through untimely redeterminations that  
 2 violated procedural protections. Yet Defendant continued to cause those determinations to be  
 3 issued or caused the underlying Department position to be maintained unless it was overturned  
 4 by an outside authority such as the Washington Office of Administrative Hearings.

5       81. Plaintiffs are suffering irreparable injury from Defendant's efforts to deprive  
 6 them of entitlements to benefits without due process of law and will continue to suffer irreparable  
 7 injury until the threat of Defendant repeating her unlawful actions is lifted.

8           **c. Class Action Allegations**

9       82. Plaintiffs bring this action on behalf of themselves and on behalf of classes of  
 10 similarly situated current and former ESD unemployment benefits claimants including the  
 11 following:

12           **i. Untimely Redeterminations Class**

13       83. All Washington residents to whom ESD issued a redetermination during the three  
 14 years preceding the date this Complaint was filed which: 1) retroactively denied the claimant  
 15 unemployment benefits after ESD had determined the claimant was entitled to the benefits; 2)  
 16 was issued more than thirty days after ESD's determination allowing the Claimant the benefits  
 17 in question; and 3) did not allege the claimant committed fraud, misrepresentation, or non-  
 18 disclosure.

19           **ii. Deficient Denial Notice Class**

20       84. All Washington residents to whom ESD issued a determination letter denying the  
 21 claimant's benefits or imposing an overpayment assessment during the three years preceding the  
 22 date this Complaint was filed, which notice failed to state the factual or legal basis for the ESD  
 23 decision.

24

25

26       //

1                   **iii.      Allegations as to All the Alleged Classes**

2               85.     Excluded from the Class are any officers or directors of the Employment Security  
 3 Department, any judge assigned to the case, any employees assigned to work on the case, and all  
 4 employees of the law firms representing Plaintiffs and the Class.

5               86.     Certification of Plaintiffs' claims for class-wide treatment is appropriate because  
 6 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence  
 7 that would be used to prove those elements in individual actions alleging the same claims.

8               87.     Numerosity (Fed. R. Civ. P. 23(a)(1))—The members of the Class are so  
 9 numerous that joinder of all members would be impracticable. Plaintiffs' class action allegations  
 10 implicate routine business practices of Defendant and ESD during a period when a historically  
 11 large volume of unemployment claims were affected by the conduct alleged above. While the  
 12 exact number of Class members is unknown at this time, it is reasonable to assume the Class  
 13 includes hundreds if not thousands of members.

14               88.     Commonality and Predominance (Fed. R. Civ. P. 23(a)(2) and 23(b)(3))—The  
 15 action involves common questions of law and fact. Those common questions of law or fact  
 16 predominate over questions that may affect only individual Class members. The common issues  
 17 arising from Defendant's conduct predominate over any individual issues. Adjudication of these  
 18 common issues in a single action has important and desirable advantages of judicial economy.  
 19 The questions of law and fact common to Plaintiffs and the Class members include, among  
 20 others, the following:

21                   **1.      Untimely Redeterminations Class**

- 22               • Whether class members applied for and were awarded unemployment benefits by  
 23               ESD;
- 24               • Whether Defendant engaged in a common course of retroactively denying class  
 25               members' entitlement to unemployment benefits over thirty days after the  
 26               benefits in question were awarded to the claimant;

- 1      • Whether Defendant engaged in a common course of redetermining claimants' entitlement to unemployment benefits in the absence of evidence of fraud, misrepresentation, or non-disclosure by the claimant;
- 2      • Whether Defendant engaged in a common course of issuing overpayment notices to class members related to the untimely redetermination of their benefits awards;
- 3      • Whether untimely redetermination notices issued by reason of the actions and omissions of Defendant violated RCW 50.20.160(3);
- 4      • Whether untimely redetermination notices issued by reason of the actions and omissions of Defendant violated the right to payment "when due" under the Social Security Act, 42 U.S.C. § 503(a)(1);
- 5      • Whether untimely redetermination notices issued by reason of the actions and omissions of Defendant violated claimants' right to due process of law under the United States Constitution;
- 6      • Whether injunctive relief is appropriate to remedy Defendant's actions and omissions; and
- 7      • The nature and extent of Class-wide injury and the measure of compensation for such injury.

18      **2. Deficient Denial Letters Class**

- 19      • Whether class members applied for and were awarded unemployment benefits by ESD;
- 20      • Whether Defendant engaged in a common course of issuing retroactive benefits denials to class members that failed to explain the factual and legal basis for the decision;
- 21      • Whether Defendant engaged in a common course of issuing letters substantially resembling the Re Evaluate Claim and Potential New Claim letters to class members;

- 1     • Whether Defendant engaged in a common course of including overpayment  
2         assessments with letters substantially resembling the Re Evaluate Claim and  
3         Potential New Claim letters and issuing the same to class members;
- 4     • Whether Defendant's actions caused class members to be denied benefits or  
5         assessed for overpayments without providing an explanation of the factual or  
6         legal basis for the ESD decision;
- 7     • Whether Defendant's actions caused class members to be denied benefits and/or  
8         assessed for overpayments in violation of claimants' right to a fair hearing under  
9         the Social Security Act, 42 U.S.C. § 503(a)(3);
- 10    • Whether Defendant's actions caused class members to be denied benefits and/or  
11         assessed for overpayments in violation of claimants' rights to due process of law  
12         under the United States Constitution;
- 13    • Whether injunctive relief is appropriate to remedy Defendant's actions and  
14         omissions; and
- 15    • The nature and extent of Class-wide injury and the measure of compensation for  
16         such injury.

17         89.     Typicality (Fed. R. Civ. P. 23(a)(3))—Plaintiffs' claims are typical of the claims  
18         of the Class. The evidence and the legal theories regarding Defendant's alleged wrongful conduct  
19         are substantially the same for Plaintiffs and the Class members, as the relevant form  
20         correspondence from ESD and redetermination and overpayment assessment practices are  
21         common among Class members.

22         90.     Adequacy (Fed. R. Civ. P. 23(a)(4))—Plaintiffs will fairly and adequately protect  
23         the interests of the Class. Plaintiffs have retained competent counsel experienced in complex and  
24         class action litigation. Plaintiffs and their counsel are committed to prosecuting this action  
25         vigorously on behalf of the Class and have the financial resources to do so. Neither Plaintiffs nor  
26         their counsel have interests that are contrary to, or that conflict with those of the Class.

91. Superiority (Fed. R. Civ. P. 23(b)(3))—Plaintiffs and the members of the Class have suffered and will continue to suffer harm and damages as a result of Defendant’s wrongful conduct. Absent a class action however, most members of the Class would likely find the cost of litigating their claims prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation because it conserves judicial resources, promotes consistency and efficiency of adjudication, provides a forum for small claimants, and deters wrongful activities. There will be no significant difficulty in the management of this case as a class action. The members of the Class are readily identifiable from the Employment Security Department’s own records.

## V. CLAIMS

## **FIRST CAUSE OF ACTION**

**(42 U.S.C. § 1983: Due Process of Law—United States Constitution, XIV Amdt.)**

92. Plaintiffs incorporate by reference all preceding paragraphs as if fully restated here.

93. Plaintiffs hereby assert claims under 42 U.S.C. § 1983 and the Fourteenth Amendment's Due Process Clause against Defendant.

94. Defendant is a “person” acting under color of state law within the meaning of 42 U.S.C. § 1983. The Washington state laws at issue are those through which Defendant administers the Washington unemployment benefits program. *See, e.g.*, RCW 50.08.010; RCW 50.12.020.

95. Defendant has subjected, or caused to be subjected, Plaintiffs to the deprivation of rights secured by the Constitution of the United States within the meaning of 42 U.S.C. § 1983.

96. Plaintiffs have a constitutionally protected property interest in the benefits awarded to them by the Washington Employment Security Department.

1       97. Plaintiffs meet the statutory and regulatory criteria entitling them to regular  
2 unemployment compensation benefits, and/or benefits under the PUA, PEUC, and FPUC  
3 programs, in the amounts and for the periods set forth in paragraphs 1-91 above.

4       98. Defendant has a duty under the Due Process Clause to provide affected  
5 beneficiaries with adequate notice of the reasons for denying or terminating their unemployment  
6 benefits. Defendant also has a duty under the Due Process Clause to provide affected  
7 beneficiaries with adequate notice of procedures through which they can contest denial or  
8 termination of their benefits. Defendant has violated, and is violating, those duties with respect  
9 to Plaintiffs.

10       99. Defendant has, through her personal involvement and through her supervision of  
11 subordinates, instituted or ratified the policy, custom, or practice of Washington's Employment  
12 Security Department denying or terminating beneficiaries' benefits without providing them with  
13 adequate notice of the reasons for the denial or termination as required by the Due Process  
14 Clause. Among other things, Defendant knew or should have known that she has caused the  
15 repeated denial and/or termination, and is continuing to cause the denial and/or termination, of  
16 beneficiaries' benefits without adequate notice, thereby risking violation of their Due Process  
17 rights.

18       100. Defendant has a duty under the Due Process Clause to provide affected  
19 beneficiaries with adequate notice of the reasons for seizing their unemployment benefits  
20 through offsets of alleged debts based on alleged overpayments to them of other benefits.

21       101. Defendant has, through her personal involvement and through her supervision of  
22 subordinates, instituted or ratified the policy, custom, or practice of Washington's Employment  
23 Security Department of seizing beneficiaries' unemployment benefits, through offsets based  
24 upon alleged overpayments, without providing them with adequate notice of the basis for the  
25 offsets as required by the Due Process clause. Among other things, Defendant has caused ESD  
26 to seize benefits from claimants based upon overpayment assessments that do not explain the

1 rationale or facts concerning the claimed overpayment underlying the seizure. In addition,  
 2 Defendant knew or should have known that she has caused the repeated seizure, and is continuing  
 3 to cause the seizure, of beneficiaries' benefits through offset without adequate notice, thereby  
 4 risking violation of their Due Process rights.

5       102. Defendant has, through her personal involvement and through her supervision of  
 6 subordinates, violated the Due Process rights of Plaintiff Sterling and others by causing ESD to  
 7 seizing their benefits through offsets without providing them with adequate notice of the basis  
 8 for the offsets.

9       103. Defendant has a duty under the Due Process Clause to give claimants adequate  
 10 notice of the circumstances under which claimants' benefits entitlements can be redetermined to  
 11 denials of benefits, and their past benefits payments converted into overpayment liabilities.

12       104. Defendant has, through her personal involvement and through her supervision of  
 13 subordinates, instituted or ratified the policy, custom, or practice of Washington's Employment  
 14 Security Department to issue to claimants retroactive decisions denying benefits previously  
 15 awarded and/or assessing overpayments for past benefits contrary to the limitations on  
 16 Defendant's jurisdiction to issue such retroactive decisions under Washington law. RCW  
 17 50.20.160(3).

18       105. Defendant violated Plaintiffs' Due Process rights by causing ESD to retroactively  
 19 determine Plaintiffs' entitlement to their benefits despite an absence of jurisdiction to issue those  
 20 redeterminations.

21       106. As a direct consequence of Defendant's acts and threatened acts, Plaintiffs  
 22 suffered and will seek compensation at trial for their actual damages, nominal damages, and the  
 23 fees and costs of this action, among other amounts listed below.

24       107. Plaintiffs will continue to suffer irreparable injury until Defendant's unlawful  
 25 and/or unconstitutional actions are enjoined and declared to be unlawful and/or unconstitutional.  
 26 Plaintiffs' past experience with their unemployment claims and Defendant's past actions and

1 inactions establish a reasonable expectation that Plaintiffs will again be subjected to the  
 2 violations described above in the future unless this Court enjoins such actions and inactions  
 3 prospectively.

4 **SECOND CAUSE OF ACTION**

5 **(42 U.S.C. § 1983: Social Security Act right to opportunity for a fair hearing)**

6 108. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1  
 7 through 91 of this Complaint.

8 109. Plaintiffs hereby assert claims under 42 U.S.C. § 1983 and the Social Security  
 9 Act, 42 U.S.C. § 503, against Defendant.

10 110. Defendant is a “person” acting under color of state law within the meaning of 42  
 11 U.S.C. § 1983. The Washington state laws at issue are those through which Defendant  
 12 administers the Washington unemployment benefits program. *See, e.g.*, RCW 50.08.010; RCW  
 13 50.12.020.

14 111. Defendant has subjected, or caused to be subjected, Plaintiffs to the deprivation  
 15 of rights secured by the laws of the United States within the meaning of 42 U.S.C. § 1983.

16 112. Defendant violated, and is violating, Plaintiffs’ individually enforceable rights  
 17 under 42 U.S.C. § 503(a)(3) requiring that they have an opportunity for a fair hearing through  
 18 which they can challenge the denial, termination or offset-seizure of unemployment benefits.

19 113. Plaintiffs meet the statutory and regulatory criteria entitling them to regular  
 20 unemployment compensation benefits and/or benefits under the PUA, PEUC, and FPUC  
 21 programs, in the amounts and for the periods set forth in paragraphs 1-91, above.

22 114. Defendant has a duty under the “fair hearing” requirement of 42 U.S.C. §  
 23 503(a)(3) to provide affected beneficiaries with adequate notice of the reasons for denying or  
 24 terminating their unemployment benefits.

25 115. Defendant has, through her personal involvement and through her supervision of  
 26 subordinates, instituted or ratified the policy, custom, or practice of Washington’s Employment

1 Security Department of denying or terminating beneficiaries' benefits without providing them  
 2 with adequate notice of the reasons for the denial or termination as required by 42 U.S.C. §  
 3 503(a)(3). Among other things, Defendant knew or should have known that she has repeatedly  
 4 denied and/or terminated, and is continuing to deny and/or terminate, beneficiaries' benefits  
 5 without such notice, thereby risking violation of their rights under 42 U.S.C. § 503(a)(3).

6 116. Defendant has violated the rights of Plaintiffs under 42 U.S.C. § 503(a)(3) by  
 7 causing the denial or attempted recoupment of their benefits without providing them with  
 8 adequate notice of the adverse action.

9 117. Defendant has a duty under 42 U.S.C. § 503(a)(3) to provide affected  
 10 beneficiaries with adequate notice of the reasons for seizing their unemployment benefits  
 11 through offsets of alleged debts based on alleged overpayments to them of other benefits.  
 12 Defendant also has a duty under 42 U.S.C. § 503(a)(3) to provide affected beneficiaries with  
 13 adequate notice of procedures through which they can contest such seizures of their benefits.

14 118. Defendant has, through her personal involvement and through her supervision of  
 15 subordinates, instituted or ratified the policy, custom, or practice of Washington's Employment  
 16 Security Department of seizing beneficiaries' unemployment benefits, through offsets based  
 17 upon alleged overpayments, without providing them with adequate notice of the basis for the  
 18 offsets as required by 42 U.S.C. § 503(a)(3). Among other things, Defendant knew or should  
 19 have known that she has repeatedly caused the seizure, and is continuing to cause the seizure, of  
 20 beneficiaries' benefits through offsets without such notice, thereby risking violation of their  
 21 rights under 42 U.S.C. § 503(a)(3).

22 119. Defendant has violated the rights of Plaintiffs under 42 U.S.C. § 503(a)(3) by  
 23 seizing their benefits through offsets without providing them with adequate notice of the basis  
 24 for the offsets.

25 120. Defendant has, through her personal involvement and through her supervision of  
 26 subordinates, violated Plaintiffs' federal statutory rights by causing ESD to issue decisions

denying benefits and/or assessing overpayments to claimants in the absence of adequate factual or legal reasons for ESD's action.

121. As a direct consequence of Defendant's acts and threatened acts, Plaintiffs suffered and will seek compensation at trial for their actual damages, nominal damages, and the fees and costs of this action, among other amounts listed below.

122. Plaintiffs will continue to suffer irreparable injury until Defendant's unlawful and/or unconstitutional actions are enjoined and declared to be unlawful and/or unconstitutional. Plaintiffs' past employment histories and Defendant's past actions and inactions establish a reasonable expectation that Plaintiffs will again be subjected to the violations described above in the future unless this Court enjoins such actions and inactions prospectively.

## **THIRD CAUSE OF ACTION**

**(42 U.S.C. § 1983: Social Security Act right to payment when due)**

123. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1 through 91 of this Complaint.

124. Plaintiffs hereby assert claims under 42 U.S.C. § 1983 and the Social Security Act, 42 U.S.C. § 503, against Defendant.

125. Defendant is a “person” acting under color of state law within the meaning of 42 U.S.C. § 1983. The Washington state laws at issue are those through which Defendant administers the Washington unemployment benefits program. *See, e.g.*, RCW 50.08.010; RCW 50.12.020.

126. Defendant has subjected, or caused to be subjected, Plaintiffs to the deprivation of rights secured by the laws of the United States within the meaning of 42 U.S.C. § 1983.

127. Defendant violated, and is violating, Plaintiffs' individually enforceable rights under 42 U.S.C. § 503(a)(1) entitling them to timely determinations of unemployment benefits and timely payment thereon.

1       128. Plaintiffs meet the statutory and regulatory criteria entitling them to regular  
2 unemployment compensation benefits and/or benefits under the PUA, PEUC, and FPUC  
3 programs, in the amounts and for the periods set forth in paragraphs 1-91 above.

4       129. Defendant has a duty under 42 U.S.C. § 503(a)(1) to make timely determinations  
5 of unemployment benefits and timely payments thereon.

6       130. Defendant has, through her personal involvement and through her supervision of  
7 subordinates, instituted or ratified the policy, custom, or practice of Washington's Employment  
8 Security Department of violating the foregoing duty by failing to make timely determinations of  
9 unemployment benefits and timely payments thereon. Among other things, Defendant knew or  
10 should have known that she has caused ESD to repeatedly make untimely determinations and  
11 untimely overpayment demands, thereby risking violations of beneficiaries' rights under 42  
12 U.S.C. § 503(a)(1).

13       131. Defendant has, through her personal involvement and through her supervision of  
14 subordinates, violated the rights of Plaintiffs under 42 U.S.C. § 503(a)(1) by failing to make  
15 timely determinations on, and timely payments regarding, their unemployment benefit claims.  
16 Moreover, Defendant has caused ESD to issue untimely redetermination notices seeking to deny  
17 claimants benefits retroactively in an absence of jurisdiction to make those determinations. RCW  
18 50.20.160(3).

19       132. As a direct consequence of Defendant's acts and threatened acts, Plaintiffs  
20 suffered and will seek compensation at trial for their actual damages, nominal damages, and the  
21 fees and costs of this action, among other amounts listed below.

22       133. Plaintiffs will continue to suffer irreparable injury until Defendant's unlawful  
23 and/or unconstitutional actions are enjoined and declared to be unlawful and/or unconstitutional.  
24 Plaintiffs' past employment histories and Defendant's past actions and inactions establish a  
25 reasonable expectation that Plaintiffs will again be subjected to the violations described above  
26 in the future unless this Court enjoins such actions and inactions prospectively.

## VI. PRAYER FOR RELIEF

134. Based upon the above allegations, Plaintiffs respectfully request that this Court enter judgment in their favor against Defendant, and award Plaintiffs and the Classes relief stated below.

## A. Injunctive relief

Plaintiffs request entry of a permanent injunction against Defendant in her official capacity that:

- Prohibits Defendant from allowing ESD to issue or enforce any decision denying unemployment beneficiaries' benefits in the future where the decision lacked a specific factual and legal basis for the action;
- Prohibits Defendant from allowing ESD to issue or enforce any decision assessing an overpayment of benefits to any unemployment beneficiary in the future where the decision lacked a specific factual and legal basis for the action;
- Prohibits Defendant from allowing ESD to reduce unemployment beneficiaries' benefits, through offsets of alleged overpayments, in the future where the decision lacked a specific factual and legal basis for the action;
- Requires Defendant to pay Plaintiffs any unemployment benefit amounts offset by Defendant without adequate notice;
- Requires Defendant to issue timely determinations of unemployment benefits and timely payments thereon; and
- Prohibits Defendant from allowing ESD to issue or enforce any decision retroactively denying any claimant benefits (or assessing any overpayment) over thirty days after payment of any given week of unemployment benefits to the claimant in the absence of evidence of fraud, misrepresentation, or non-disclosure of material facts in violation of RCW 50.20.160(3).

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## B. Declaratory relief

135. Plaintiffs request entry of a declaratory judgment against Defendant in her official capacity declaring that:

- Defendant has violated her duty under the Due Process Clause of the Fourteenth Amendment to provide adequate notice of the reasons for denying, terminating or reducing unemployment beneficiaries' benefits, including through offsets;
- Defendant has violated her duty under 42 U.S.C § 503 to provide adequate notice of the reasons for denying, terminating or reducing unemployment beneficiaries' benefits, including through offset;
- Defendant has violated her duty under 42 U.S.C. § 503 to make timely determinations of unemployment benefits and timely payment thereon; and
- Defendant has violated her duty under 42 U.S.C. § 503 to provide claimants with an opportunity for a fair hearing.

## C. Damages

136. Plaintiffs and Class members request that this Court award them their actual damages, exemplary damages, and nominal damages against Defendant in her personal capacity for Defendant's violation of their rights under the U.S. Constitution and federal law, and award Plaintiffs their reasonable attorney fees and costs of this suit under 42 U.S.C. § 1988 and as provided by law and equity.

#### D. Additional relief

137. Plaintiffs ask that the Court grant such further relief as the Court deems just and proper.

11

## **VII. JURY TRIAL DEMAND**

138. Plaintiffs request a jury trial as to all claims in this Complaint so triable.

Respectfully signed and dated April 14, 2022.

## SMITH & DIETRICH LAW OFFICES PLLC

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